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Board (PERB)

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8-10-1994

## State of New York Public Employment Relations Board Decisions from August 10, 1994

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from August 10, 1994

### Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

ODESSA-MONTOUR TRANSPORTATION  
ASSOCIATION,

Charging Party,

-and-

CASE NO. U-14544

ODESSA-MONTOUR CENTRAL SCHOOL DISTRICT,

Respondent.

---

JOHN B. SCHAMEL, for Charging Party

SAYLES, EVANS, BRAYTON, PALMER & TIFFT (CYNTHIA S.  
HUTCHINSON and JAMES F. YOUNG of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions to a decision by an Administrative Law Judge (ALJ) filed by the Odessa-Montour Transportation Association (Association). The Association charges that the Odessa-Montour Central School District (District) violated §209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act) when it unilaterally subcontracted its school bus service and refused to respond to demands to negotiate the decision to subcontract and to continue negotiations for a successor to a collective bargaining agreement which had expired on June 30, 1991.

The ALJ dismissed the charge after a hearing. He dismissed the subdivision (a) allegation for lack of proof of any improper

motive. He dismissed the unilateral change aspect of the charge on the ground that that allegation was limited to actions taken by the Board of Education, which, as the District's legislative body, cannot violate §209-a.1(d) of the Act. The ALJ dismissed the remaining aspects of the charge on the ground that the District's delay in responding to the Association's demands to negotiate both the subcontract and the successor collective bargaining agreement was not unreasonably long under the circumstances of the parties' negotiations, which were interrupted for lengthy periods of time.

The Association argues that the ALJ erred in dismissing the unilateral change aspect of the charge, which centers on the District's subcontract of the school bus operation. The District argues in response that the ALJ's conclusions of law and findings of fact in that respect are correct and that his decision should be affirmed.

Having reviewed the record and considered the parties' arguments, we reverse the ALJ's decision insofar as he found the §209-a.1(d) subcontracting allegation deficient as a matter of law, but otherwise affirm.

We have held consistently that a legislative body of government, such as a school district's board of education, acting in that capacity, cannot violate the bargaining provisions of the Act because it has neither the right nor the duty to

negotiate.<sup>1/</sup> Unlike the ALJ, however, we do not find that the Association's charge is limited to the actions of the District's Board of Education.

The Board of Education's vote of March 11, 1993, by which it accepted a private subcontractor's bid for the bus operation and abolished all Association unit positions, is included in the details of the charge among the Association's several other pleaded allegations of fact. The concluding allegations in the charge, however, are directed against the "District". In answering those allegations, the District admits that the Board of Education's vote of March 11, 1993 was final for all relevant purposes. On the strength of that vote and the District's interpretation of it, the District's chief negotiator refused to bargain with the Association for a collective bargaining agreement having a duration beyond that March 11, 1993 date. From that refusal, and other correspondence exchanged between the parties' chief negotiators, it is clear that the District, including its Superintendent of Schools, wholly adopted the action of its Board of Education. Therefore, we find both allegation and evidence of executive action as of March 11, 1993 sufficient as a matter of law to support a prima facie claim of violation of §209-a.1(d) of the Act insofar as the charge is premised on the subcontract of the District's bus operation. Whether, as the District claims, it satisfied its decisional

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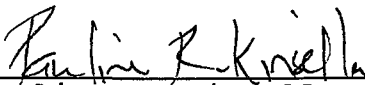
<sup>1/</sup>See, e.g., City of Lockport, 26 PERB ¶3048 (1993).

bargaining obligation on that issue or whether its action was privileged because the Association waived any right to bargain that decision are issues which are not properly before us at this time because the ALJ did not make any findings or conclusions in those respects.


To the extent the Association takes exception to the ALJ's dismissal of the remaining aspects of the charge, we affirm the ALJ's decision. The ALJ properly considered the history of the parties' negotiations in assessing the reasonableness of the District's delayed response to the Association's demands to bargain. Lacking evidence of improper motive, the §209-a.1(a) allegation was also properly dismissed by the ALJ because there is no per se interference in a decision to subcontract unit work for economic reasons.

For the reasons and to the extent set forth above, the ALJ's decision is reversed and the case is remanded for decision consistent with our decision herein. SO ORDERED.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

## PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 200-C,

Charging Party,

-and-

CASE NO. U-11924

CANANDAIGUA CITY SCHOOL DISTRICT,

Respondent.

---

THOMAS M. BEATTY and DEANA FOX, for Charging Party

HARRIS BEACH & WILCOX (JAMES A. SPITZ, JR., and SUSAN  
BURGESS of counsel) for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Canandaigua City School District (District) to a decision by an Administrative Law Judge (ALJ). After a six-day hearing, the ALJ held that, as alleged in a charge filed by the Service Employees International Union, Local 200-C (SEIU), the District violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) when it declined to hire three individuals as bus drivers for the District who had been drivers for a private company which had subcontracted transportation services to the District from 1978 until June 1990. The ALJ held that the District did not hire the three individuals because they had actively pursued grievances against the private company under their applicable collective bargaining agreement and, implicitly, that they were similarly

likely to exercise rights protected by the Act if hired by the District.

The District argues in its exceptions that we do not have jurisdiction over the charge because SEIU did not have standing to file it, that the ALJ denied it a fair hearing because, through questions at the hearing, the ALJ became an advocate for SEIU, and that SEIU did not establish that the three individuals were denied employment with the District for any reason improper under the Act.

SEIU argues in its response that the District's exceptions are without merit and that the ALJ's decision should be affirmed.

The District first argues that SEIU did not have standing to file this charge. The individuals who were denied employment with the District allegedly in violation of the Act could themselves have filed this charge against the District. The Act unquestionably covers former public employees who allege that they have lost their public sector employment in violation of the Act. Individuals who allegedly would have been public employees but for a public employer's unlawful discrimination are equally covered. A public employer violates the Act by denying employment to persons because it suspects, for whatever reason, that they may or will exercise rights afforded them by the Act. To hold otherwise would leave these individuals without any remedy for what may have been a violation of the Act because the District's refusal to hire is not subject to the jurisdiction of any other labor relations agency. Having held this, it is clear



that SEIU has standing to file the charge on behalf of the three individuals. Our Rules of Procedure (Rules) permit a charge to be filed on behalf of individuals by "an employee organization".<sup>1/</sup> SEIU is plainly an employee organization within the meaning of the Act, the District itself having

stipulated to its status pursuant to a representation petition filed by SEIU shortly after this charge was filed.<sup>2/</sup> SEIU did not have to be the certified or recognized bargaining agent of the individuals who had been denied public employment with the District for reasons allegedly in violation of the Act as a condition to its entitlement to file a charge on their behalf.

In assessing the District's second noted exception, we begin with the fundamental principle that parties are entitled in quasi-judicial administrative proceedings to a fair hearing in appearance and in fact before an impartial trier of fact. An ALJ under our Rules has the power to examine witnesses to ensure a clear and complete record.<sup>3/</sup> When exercising that role, however, it is imperative that an ALJ refrain from a level of participation which is susceptible to an appearance or perception that the ALJ has supported the position of a party.

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<sup>1/</sup> Rules, §204.1(a)(1).

<sup>2/</sup> That petition sought to represent the District's bus drivers and was dismissed after an election in which a majority of the eligible employees voted against representation by SEIU.


<sup>3/</sup> Rules, §204.7(d).

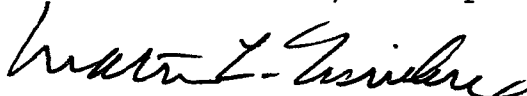
Having reviewed the record in this case, we find that the ALJ at times undertook an extensive examination of witnesses regarding issues of credibility and fact which were properly within the province and function of an advocate. The product of that examination formed the basis, in part, of the ALJ's decision. That level of participation is of particular concern in any case such as this where the employer's motivation for its action is the major, if not the only, issue in dispute.

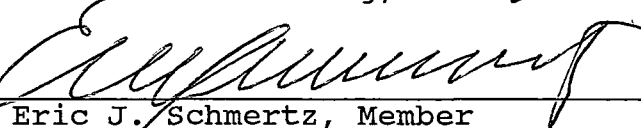
Our reluctance to require a new hearing in this or any case is outweighed by our obligation to ensure that the hearing process is conducted without even an appearance of any type of unfairness. It is that process we protect by our order herein. In remanding for a new hearing pursuant to the District's second exception, it is not necessary or appropriate for us to reach the District's exceptions concerning the ALJ's disposition of the merits of the charge.

For the reasons set forth above, IT IS ORDERED that the ALJ's decision is reversed and the case is remanded for reassignment to a different ALJ for such further processing as is then necessary and appropriate.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

PINE PLAINS CENTRAL SCHOOL DISTRICT,

CASE NO. E-1792

Upon the Application for Designation of  
Persons as Managerial or Confidential.

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In the Matter of

PINE PLAINS ADMINISTRATIVE ASSOCIATION,  
SAANYS,

Petitioner,

-and-

CASE NO. CP-300

PINE PLAINS CENTRAL SCHOOL DISTRICT,

Employer.

---

BEVERLY HACKETT, CHIEF COUNSEL (DENISE M. VERFENSTEIN  
of counsel), for Petitioner/Intervenor

SHAW & SILVEIRA (DAVID S. SHAW of counsel), for Employer

BOARD DECISION AND ORDER

These cases come to us on exceptions filed by the Pine Plains Central School District (District) to a decision by the Director of Public Employment Practices and Representation (Director). As relevant to this appeal, the Director dismissed the District's application for the designation of Susan Deer, Director of Pupil Personnel Services, as managerial under §201.7(a) of the Public Employees' Fair Employment Act (Act) and placed her in a unit represented by the Pine Plains Administrative Association, SAANYS (Association) pursuant to the Association's unit placement petition.

The District argues that the Director erred in finding that Deer is not managerial and also erred by placing her in the Association's unit because she has supervisory responsibilities over certain unit employees. The Association argues in response that the Director's decision is in accord with the facts in the record and the prevailing law and should be affirmed.

Having reviewed the record and considered the parties' arguments, we affirm the Director's decision.

The District argues primarily that Deer formulates policy within the meaning of §201.7(a)(i) of the Act because she has District-wide responsibility for the District's special and compensatory education programs. It is not, however, the fact of an employer-wide responsibility over a program area which warrants a managerial designation, but the nature and the extent of the duties performed by or reasonably required of an individual<sup>1/</sup> as a result of that assigned area of responsibility. The Director was not persuaded that the testimony of the District's only witness, William T. Wilson, the Superintendent of Schools, or the documentary evidence, supported a finding that Deer's position, created just three months before the application was filed, was one which required the formulation of policy as defined and interpreted.<sup>2/</sup>

The Director determined that the record was largely conclusory and that those specific facts which were established

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<sup>1/</sup>City of Binghamton, 12 PERB ¶3099 (1979).

<sup>2/</sup>State of New York, 5 PERB ¶3001 (1972).

did not warrant the conclusions articulated and sought by the District. We agree with the Director's assessment of this record. Perhaps because Deer's is a relatively new position, and the Superintendent's tenure fairly recent, the record lacks facts sufficiently detailed to warrant a managerial designation on any basis. Given these record facts, we find no inconsistency between the Director's decision and any other Board or Director decisions relied upon by the District.<sup>3/</sup> Our affirmance is, of course, without prejudice to the District's right to file an application in the future as necessary and appropriate in accordance with applicable law and rule.

We also affirm the Director's placement of Deer's title in the Association's unit. Although Deer supervises certain unit employees, the Association's unit already contains principals who exercise supervisory authority over the same employees Deer supervises. Even assuming that Deer's supervisory role over these unit employees is more direct and, in some respects, arguably more substantial than that exercised by the principals, we find that Deer's placement in the unit conforms with the statutory uniting criteria. The unit placement made by the Director is consistent with the composition of the existing unit. To deny the placement would be to deny representation to an employee currently covered by the Act, a result to be avoided if possible.<sup>4/</sup>

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<sup>3/</sup>E.g., Northport-E. Northport Union Free Sch. Dist., 12 PERB ¶3119 (1979).

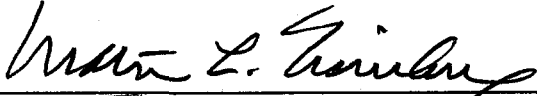
<sup>4/</sup>See Queensbury Union Free Sch. Dist., 27 PERB ¶3035 (1994).

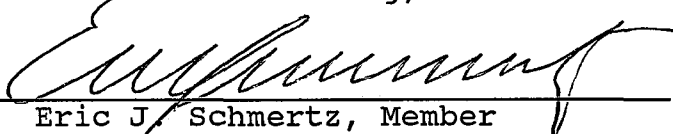
For the reasons set forth above, the Director's decision is affirmed and the District's exceptions are dismissed.

IT IS, THEREFORE, ORDERED that the application must be, and it hereby is, dismissed and the unit placement petition is granted.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 1000, AFSCME, AFL-CIO, ONONDAGA  
COUNTY LOCAL 834,

Charging Party,

-and-

CASE NO. U-14304

COUNTY OF ONONDAGA,

Respondent.

---

NANCY E. HOFFMAN, GENERAL COUNSEL (TIMOTHY CONNICK of  
counsel), for Charging Party

JON A. GERBER, COUNTY ATTORNEY (THOMAS H. KUTZER of  
counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the County of Onondaga (County) to a decision of an Administrative Law Judge (ALJ) in which the ALJ determined that the County had violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when, on November 13, 1992, it unilaterally discontinued the use of employees within its department of health to perform tests for certain sexually transmitted diseases (chlamydia, gonorrhea and syphilis) and, instead, engaged the services of a private contractor, Centrex Clinical Labs, Inc. (Centrex), to perform such tests. The Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Onondaga County Local 834 (CSEA), which

represents the affected employees, has filed a response in support of the ALJ's decision.<sup>1/</sup>

In treating with the matter, the ALJ properly relied upon our decision in Niagara Frontier Transportation Authority,

~~18 PERB ¶3083 (1985), where we held (at 3182):~~

With respect to the unilateral transfer of unit work, the initial essential questions are whether the work had been performed by unit employees exclusively [footnote omitted] and whether the reassigned tasks are substantially similar to those previously performed by unit employees. If both these questions are answered in the affirmative, there has been a violation of §209-a.1(d), unless the qualifications for the job have been changed significantly.

Finding that the County unilaterally contracted with Centrex, that the testing for sexually transmitted diseases had been exclusively performed by unit employees,<sup>2/</sup> that the County, having contracted with Centrex for fiscal reasons alone, made no substantial change in the service actually rendered, and that there had been no change in any necessary qualifications to

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<sup>1/</sup>The ALJ also found that the County had unilaterally subcontracted the testing of water in violation of the Act. The County took no exception to this determination. The ALJ dismissed CSEA's alleged violation of §209-a.1(a) of the Act and dismissed CSEA's charge that the County had unilaterally subcontracted certain auto repair work. CSEA takes no exceptions to these determinations.

<sup>2/</sup>The ALJ noted that some temporary and seasonal personnel had performed nontechnical services associated with the testing, but that such work was not substantially similar to the work performed by the unit employees, and represented a discernible boundary which preserved exclusivity. No exceptions have been taken to this finding.



perform the tests, the ALJ concluded that the County had violated §209-a.1(d) of the Act by transferring the unit work to Centrex.

Although the County takes no exceptions to the ALJ's findings of fact, it contends that he erred in concluding that ~~unit employees had exclusively performed the testing for sexually~~ transmitted diseases, generally, and for syphilis, specifically.

The record shows that unit employees performed over 33,000 gonorrhea tests, over 6,000 chlamydia tests and over 15,000 syphilis tests during calendar year 1992. Although unit employees exclusively performed the testing for gonorrhea and chlamydia, beginning with one test in April, one of the County's satellite health clinics started using Centrex to perform tests for syphilis, incidental to a battery of other unrelated tests it was ordering for its clients. The ALJ found that Centrex had performed a total of 841 such tests by the end of 1992, which includes the period when no unit personnel were performing them at all. While the method Centrex uses for its syphilis tests differs from that used by unit employees, the ALJ found - and the County does not dispute - that both methods produce the same results, thereby equally satisfying the County's mission in that regard.<sup>3/</sup>

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<sup>3/</sup>The County is required to perform tests for sexually transmitted diseases pursuant to Public Health Law §2306, but no specific methodology for the tests is prescribed by law.

The ALJ found that the County's very limited use of Centrex to perform syphilis tests, among a series of other unrelated tests between April and November, did not destroy CSEA's claim of exclusivity over the County's testing program. We agree.

~~In State of New York (Division of Military and Naval Affairs)~~, 27 PERB ¶3027 (1994), we held that an employer's regular and open utilization of nonunit personnel to perform unit work for more than one year before the union complained of such activity extinguished the union's claim of exclusivity over such work, irrespective of whether it knew or reasonably should have known of the employer's actions. However, in reaching that conclusion, we noted (at 3068):

We are not called upon and do not decide whether a transfer of work under different circumstances or for a shorter period of time would have disestablished [the union's] exclusivity. We hold only that a regular and open assignment of nonunit personnel to work done by unit employees for a period in excess of one year constitutes a breach of exclusivity which precludes [the union] from establishing exclusivity in fact over the work allegedly transferred.

We now have occasion to apply that analysis to new and different circumstances.

Unlike in State of New York, a relatively insignificant number of syphilis tests, incidental to a battery of unrelated tests, were performed by Centrex between April and November, when the County contracted with Centrex to perform all testing for sexually transmitted diseases. On these facts, we find it

unreasonable to conclude that this very limited and incidental use of Centrex would affect the historical fact that the County exclusively used CSEA unit employees to perform the testing for such diseases.<sup>4/</sup>

~~We find, therefore, that the County's brief and incidental~~ use of Centrex to perform a comparatively insignificant number of tests for syphilis, does not extinguish CSEA's claim to exclusivity over the testing of sexually transmitted diseases, generally, and syphilis, specifically.<sup>5/</sup>

By reason of the foregoing, we affirm the ALJ's conclusion that the County violated §209-a.1(d) of the Act when, on November 13, 1992, it transferred to Centrex all testing for chlamydia, gonorrhea and syphilis. We find it appropriate, however, to modify the remedy ordered by the ALJ.

While the ALJ ordered the restoration of the testing for chlamydia to the bargaining unit, he only ordered the restoration

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<sup>4/</sup>Compare Bd. of Educ. of the City Sch. Dist. of the City of Long Beach, 26 PERB ¶3065 (1993).

<sup>5/</sup>Even if we were to find that the testing by Centrex was sufficient to destroy CSEA's claim to exclusivity over the testing for syphilis, we would find that such testing does not affect CSEA's claimed exclusivity over the testing for the other diseases. County of Onondaga, 24 PERB ¶3014 (1991), conf'd, 187 A.D.2d 1014, 25 PERB ¶7015 (4th Dep't 1992), motion for leave to appeal denied, 81 N.Y.2d 706, 26 PERB ¶7003 (1993); Spencer-Van Etten Cent. Sch. Dist., 21 PERB ¶3015 (1987); Town of West Seneca, 19 PERB ¶3028 (1986).

of the methodologies the County previously used for the testing for gonorrhea and syphilis. We find, on the other hand, that it is not for PERB to determine the methodology used by the County. Therefore, we modify the ALJ's order by also directing the County to restore to the bargaining unit the testing for syphilis and gonorrhea, irrespective of the methodology the County prefers to utilize.

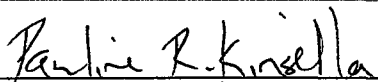
Accordingly, as modified, the ALJ's determination and order are affirmed.

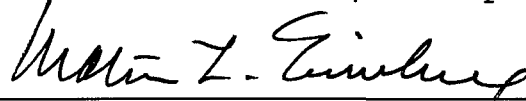
NOW, THEREFORE, IT IS ORDERED that the County shall:

1. Restore to the bargaining unit represented by CSEA that testing for gonorrhea, chlamydia and syphilis, which had been transferred to Centrex Clinical Labs, Inc. on November 13, 1992.
2. Restore to the bargaining unit represented by CSEA the water testing for mandated programs which had been contracted out to Buck Environmental Labs, Inc. on October 23, 1992.
3. Make unit employees whole for lost wages and/or benefits, if any, suffered as a result of the transfer of said work, with interest at the currently prevailing maximum legal rate.

4. Sign and post a notice in the form attached in all locations ordinarily used to post notices of information to unit employees.

DATED: August 10, 1994  
Albany, New York

  
\_\_\_\_\_  
Pauline R. Kinsella, Chairperson

  
\_\_\_\_\_  
Walter L. Eisenberg, Member

  
\_\_\_\_\_  
Eric J. Schmertz, Member

APPENDIX

# NOTICE TO ALL EMPLOYEES

PURSUANT TO  
THE DECISION AND ORDER OF THE

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE  
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify the employees of the County of Onondaga (County) in the Health Department Laboratory represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Onondaga County Local 834 (CSEA) that the County will:

1. Restore to the bargaining unit represented by CSEA that testing for gonorrhea, chlamydia and syphilis, which had been transferred to Centrex Clinical Labs, Inc. on November 13, 1992.
2. Restore to the bargaining unit represented by CSEA the water testing for mandated programs which had been contracted out to Buck Environmental Labs, Inc. on October 23, 1992.
3. Make unit employees whole for lost wages and/or benefits, if any, suffered as a result of the transfer of said work, with interest at the currently prevailing maximum legal rate.

Dated . . . . .

By . . . . .  
(Representative) (Title)

COUNTY OF ONONDAGA  
. . . . .

*This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.*

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

GLOVERSVILLE-JOHNSTOWN WASTEWATER  
EMPLOYEES ASSOCIATION,

Charging Party,

-and-

CASE NO. U-15262

GLOVERSVILLE-JOHNSTOWN JOINT SEWER BOARD,

Respondent.

---

TERRENCE M. WALSH, ESQ., for Charging Party

GOLDBERGER AND GOLDBERGER (BRYAN J. GOLDBERGER of counsel),  
for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Gloversville-Johnstown Wastewater Employees Association (Association) to a decision by the Assistant Director of Public Employment Practices and Representation (Assistant Director). The charge, as amended at the conference, alleges that the Gloversville-Johnstown Joint Sewer Board (Sewer Board) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by unilaterally instituting work shifts different from those provided in the parties' collective bargaining agreement. The Assistant Director conditionally dismissed the charge, thereby deferring the jurisdictional issues raised under it, to "pending contract grievances" pursuant to our decision in Herkimer County

BOCES.<sup>1/</sup>

In its exceptions, the Association argues that the deferral was inappropriate because it did not agree to it and the grievances, which were withdrawn before any action on them, were filed by individual unit employees, not the Association itself.

The Sewer Board has filed cross-exceptions and a response to the Association's exceptions. In its cross-exceptions, the Sewer Board argues that the Assistant Director's conditional dismissal of the charge pursuant to Herkimer County BOCES was not appropriate because the grievances had been withdrawn in mid-March, before the Assistant Director's decision was issued on April 4. Therefore, the Sewer Board argues that the Assistant Director should have reached the underlying jurisdictional issue and unconditionally dismissed the charge for lack of jurisdiction under §205.5(d) of the Act. It argues in response to the Association's exceptions that those exceptions are defective because they are not accompanied by a memorandum of law as, it claims, is required by our Rules of Procedure.

We need not consider the Association's exceptions or the Sewer Board's arguments in response thereto because the cross-exceptions necessitate a remand to the Assistant Director.

Our decision in Herkimer County BOCES reflects this Board's policy to defer consideration of any jurisdictional issues raised by an improper practice charge pending the resolution of any pending contract grievances concerning the subject matter of the

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<sup>1/</sup>20 PERB ¶3050 (1987).



charge. That deferral policy is inapplicable, however, if contract grievances are not pending.<sup>2/</sup>

A brief analysis of Herkimer County BOCES explains our remand. Herkimer County BOCES represents a policy-based declination to exercise jurisdiction to decide jurisdictional issues in deference to the procedures the parties have agreed upon to resolve questions of contract interpretation. As this jurisdictional deferral is strictly a matter of discretion, we may properly consider any information bearing upon the exercise of that discretion. In that regard, it is undisputed that the grievances were not pending when the Assistant Director deferred consideration of the jurisdictional issues.<sup>3/</sup>

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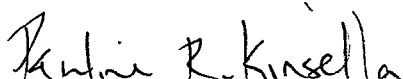
<sup>2/</sup>Erie County Water Auth., 22 PERB ¶3006 (1989).

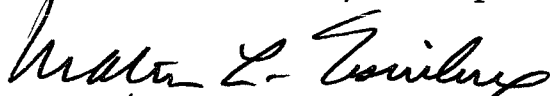
<sup>3/</sup>We note for the benefit of these parties and others similarly situated that consideration of the issues in this case has been delayed by the parties' failure to notify the Assistant Director that the grievances had been withdrawn. Although the Association's letter to the Sewer Board withdrawing the grievances shows a copy to the "Public Employment Relations Board", it is not in the file, although the Sewer Board's response to that letter, dated March 16, 1994, is included. The Sewer Board's March 16 response, however, does not make it clear that the grievances had been withdrawn. Therefore, the Assistant Director apparently did not know when he wrote his decision that the grievances were no longer pending. It appears clearly from his decision that the Assistant Director would not have deferred consideration of the jurisdictional issues had he known that the grievances were not pending. The withdrawal of the grievances would have permitted the charge to be reopened because the condition under which it was dismissed, the pendency of contract grievances, either did not exist or had been removed. Upon reopening, the jurisdictional and merits issues would have been before the Assistant Director for disposition as appropriate. Parties should be aware of the opportunity to reopen charges which have been conditionally dismissed pursuant to Herkimer County BOCES and would be better advised to avail themselves of it in lieu of filing exceptions.

The withdrawal of the grievances properly places any jurisdictional issues before the Assistant Director for disposition. The Assistant Director did not decide whether any or all of the allegations of the charge are beyond our jurisdiction under §205.5(d) of the Act. Any allegations which are found to be within our jurisdiction would necessarily be subject to further processing and possible hearing. Therefore, it is necessary that the case be remanded to the Assistant Director.

For the reasons set forth above, the case is remanded to the Assistant Director for further processing consistent with our decision herein. SO ORDERED.

DATED: August 10, 1994  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

  
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Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

COMSEWOGUE ADMINISTRATORS' ASSOCIATION,

Charging Party,

-and-

CASE NO. U-12881

COMSEWOGUE UNION FREE SCHOOL DISTRICT,

Respondent.

---

PAUL J. DERKASCH, ESQ., for Charging Party

CAHN WISHOD & LAMB (EUGENE R. BARNOSKY of counsel), for  
Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Comsewogue Administrators' Association (Association) to an Administrative Law Judge's (ALJ) decision dismissing its charge against the Comsewogue Union Free School District (District). The Association alleges in its charge, as amended, that the District violated §209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act) when it unilaterally reassigned the duties of an assistant principal to the building principal after the assistant principal's position had been abolished for budgetary reasons. The Association alleges that the reassignment repudiated a 1991 letter agreement between the parties and that the reassignment of duties was mandatorily negotiable, and, therefore, protected from the District's unilateral change given

the sweeping extent of the reassignment and the concomitant increase in the principal's workday and workload.

The ALJ dismissed the charge after a hearing. He found no basis for a repudiation claim, that the reassignment of duties ~~was not mandatorily negotiable because it did not change the~~ fundamental character of the principal's job, and that there was no jurisdiction over the workday/workload allegations because the 1991 letter agreement provided the Association an arguable source of contract right with respect to those allegations.<sup>1/</sup>

The Association argues that the ALJ mischaracterized the charge, erred in concluding that there was no contract repudiation, and incorrectly dismissed the (a) and (c) allegations of the charge for failure of proof and the workday/workload aspects of the (d) allegation for lack of jurisdiction. The District, in response, argues that the ALJ did not make any errors of fact or law and that his decision should be affirmed.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

We do not agree with the Association's claim that the ALJ misconstrued its charge. To the contrary, the ALJ gave the Association the benefit of any arguable interpretation of the charge or any supporting theories of violation. The

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<sup>1/</sup>Such allegations are outside our jurisdiction under §205.5(d) of the Act. County of Nassau, 23 PERB ¶3051 (1992).

Association's argument to the contrary rests on one sentence from the ALJ's decision, which, even in the context of the Association's argument, does not materially misrepresent the charge.<sup>2/</sup>

~~The dismissals of the (a) and (c) allegations for failure of~~  
proof were correct. A reassignment of job duties for economic reasons is not inherently a statutorily improper interference or discrimination and there is nothing in the record which would support a finding of violation on those theories apart from an alleged repudiation of contract, which might support a derivative (a) violation. In our discussion infra, however, we affirm the ALJ's dismissal of the repudiation aspect of the charge. The cases otherwise relied upon by the Association in this respect are inapposite because they involved actions taken outside the scope of managerial prerogative which per se interfered with and discriminated against employee's statutorily protected rights. Connetquot Central School District<sup>3/</sup> and Monticello Central School District,<sup>4/</sup> for example, both involve an employer's intentional bypass of the bargaining agent through the extension

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<sup>2/</sup>The ALJ characterized the charge as one that "alleges that the District violated §209-a.1(a), (c) and (d) of the Act on the basis of a single transaction -- its assignment of the assistant principal's duties to [the principal]."

<sup>3/</sup>19 PERB ¶13045 (1986).

<sup>4/</sup>22 PERB ¶13002 (1989).

of benefits directly to an employee which surpassed or differed from the negotiated benefits.

All aspects of the (d) allegation, except those grounded upon the Association's repudiation theory, are properly dismissed for lack of jurisdiction. ~~The Association alleges that the 1991~~ letter agreement requires the District to reduce an administrator's "traditional" duties in equal proportion to any new duties added when the addition of duties stems from the elimination of a position. The Association alleges that the letter agreement was at all relevant times in effect and that it denied the District the right to make the duty assignments to the principal under the conditions in which those assignments were made. The Association argues that the jurisdictional limitation in §205.5(d) of the Act attaches only to collective bargaining agreements, not collateral agreements such as the letter agreement of 1991. Such an interpretation of §205.5(d) of the Act, however, has been specifically rejected.<sup>5/</sup>

There remains for our consideration the ALJ's dismissal of the contract repudiation aspect of the charge. The alleged denial of the existence of a valid agreement without any colorable claim of right is a repudiation within our jurisdiction to consider, notwithstanding the limitation in §205.5(d) of the

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<sup>5/</sup>Glens Falls PBA v. PERB, 195 A.D.2d 933, 26 PERB ¶7009 (3d Dep't 1993); State of New York (Dep't of Taxation and Finance), 24 PERB ¶3034 (1991).

Act.<sup>6/</sup> Having reviewed the record, the District's only arguable repudiation of the 1991 letter agreement lies in an affirmative defense in its answer that the letter agreement was not binding because it had not been ratified or approved by its board of education. ~~This, however, is not a repudiation of agreement over~~ which we have exercised jurisdiction. Our retention of jurisdiction over a contract repudiation is intended to prohibit a party from disavowing, in whole or in part, a contract which it acknowledges to be valid and subsisting. One cannot repudiate that which is not acknowledged to exist. To hold otherwise would deny a party an opportunity to mount that particular defense to an alleged contract violation. The District's answer constitutes the type of "colorable defense" to a contract action which raises the very issues of contract interpretation and enforcement we are constrained to avoid under §205.5(d) of the Act.

Apart from this basis for affirmance of this aspect of the ALJ's decision, the record in any event shows that, in fact, the District did not consider the letter agreement to be invalid because it applied it in two other duty reassignments. Its motion to dismiss the charge, filed after its answer, also makes it sufficiently clear that the District considered that the letter agreement was valid and enforceable for the relevant term.

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<sup>6/</sup>See, e.g., Connetquot Cent. Sch. Dist., 21 PERB ¶13049 (1988).

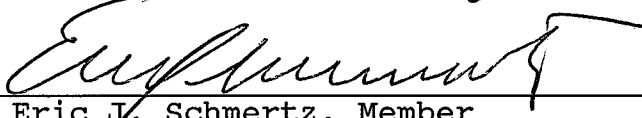
For the reasons set forth above, the ALJ's decision is affirmed and the Association's exceptions are dismissed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: August 10, 1994  
Albany, New York

  
\_\_\_\_\_  
Pauline R. Kinsella, Chairperson

  
\_\_\_\_\_  
Walter L. Eisenberg, Member

  
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Eric J. Schmertz, Member



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 1000, AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-14426

COUNTY OF NASSAU,

Respondent.

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NANCY E. HOFFMAN, GENERAL COUNSEL (PAMELA BAISLEY of  
counsel), for Charging Party

BEE & EISMAN (DANIEL E. WALL of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to a decision of an Administrative Law Judge (ALJ) dismissing its charge that the County of Nassau (County) had violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally discontinued a past practice of tuition reimbursement for unit employees.

The ALJ found that the practice had been subject to the condition of funding being provided in the County budget. When the County legislature eliminated funding for the program from the budget effective January 1, 1993, the ALJ found that the County merely acted in accordance with the condition when it thereafter discontinued the tuition reimbursement program.

CSEA excepts on the facts and the law, arguing that as the County had not pled in its answer the existence of the funding condition as an affirmative defense, it was error, as a matter of law, for the ALJ to consider it in rendering his decision. CSEA further argues that the record facts do not establish the existence of such a condition to tuition reimbursement. The County fully supports the ALJ's decision.

For the reasons set forth below, we dismiss CSEA's exceptions and affirm the decision of the ALJ.

Since at least 1979, the County had provided tuition reimbursement of 50% of the difference between actual tuition costs and other financial aid received for eligible full-time employees<sup>1/</sup> involved in direct patient care, who successfully completed job-related courses for which they had paid in full and made application for reimbursement at least one month prior to the commencement of the course. The County included information regarding tuition reimbursement in a document promulgated in 1979, entitled Nassau County Reimbursement Program for County Employees. That document provides that:

Each county department or agency budgets for its own education cost. Reimbursement is contingent upon the funds available in each department's budget, sub-code D51. Each department head should review funds available before submitting requests for tuition reimbursement.

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<sup>1/</sup>At the Nassau County Medical Center (NCMC), these employees included: registered nurse I, II, III, or IV; licensed practical nurse I or II; personal care aide (or personal care assistant) I or II; clinical technician I or II; and nurses aide I or II.

The document was subsequently modified, although not here relevant except insofar as the document was changed in 1990 to reflect the County's adoption of a 100% tuition reimbursement program, subject to the same availability of funding conditions. This document was distributed to all department heads, numerous employees and was included in an information packet given to all new County employees. The 100% reimbursement program was adopted after Labor-Management Committee meetings held in 1988 and 1989, when County and CSEA representatives met to address recruitment problems being faced by the County in hiring and retaining qualified nurses. Eventually, they made a recommendation, which the County adopted, whereby certain employees of the NCMC would receive an enhanced benefits package which included 100% tuition reimbursement for courses which were related to receiving a Bachelor of Sciences degree, for which the qualified employees had made timely application, had paid in full and had successfully completed. The description of the 100% tuition reimbursement program was included in the County's 1989 document Department of Nursing's Role in the Tuition Reimbursement Process, which sets forth the criteria for the 100% program, including the necessity for County approval of funding.

During 1991 and 1992, as the County's fiscal situation worsened, several requests for tuition reimbursement were denied

by both department heads and the County due to lack of funds.<sup>2/</sup>

The ALJ accepted the evidence of the availability of funding condition to the tuition reimbursement program over CSEA's objection that it was inadmissible because the conditional nature of the practice had not been pled as an affirmative defense by the County. The ALJ noted that the County had in its answer generally denied the existence of a past practice as characterized by CSEA. He further determined that evidence of the County's "version" of the past practice was admissible and need not have been pled as an affirmative defense. We affirm the ALJ's ruling and his decision dismissing the charge. It was CSEA's burden to establish the existence of a past practice.<sup>3/</sup> The County was then entitled to introduce relevant evidence as to the nature of the claimed past practice, whether to establish its nonexistence or exceptions or conditions to it. Indeed, it is a respondent's burden to introduce evidence that a change it makes

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<sup>2/</sup>In 1990, the Police Department went from reimbursing 50% of eligible tuition costs to a \$300 per employee per year cap. In 1991, the Office of General Services stopped tuition reimbursement altogether due to lack of funds and the Department of Health went to a one course per year limit. A 1992 memorandum to unit employees at the County's A. Holly Patterson Geriatric Center confirms:

In light of the County's current fiscal situation, all requests for tuition reimbursement for 1992 will be contingent upon the funds available in our budget.

<sup>3/</sup>County of Nassau, 24 PERB ¶13029 (1991).

in a past practice is permissible because the "practice was in some way limited or conditioned."<sup>4/</sup>

The evidence submitted in conjunction with the County's denial of CSEA's allegations regarding the past practice establishes that the 50% tuition reimbursement program was conditioned on available funding since its inception in 1979. The documentation distributed to unit employees describing the program contained clear language to that effect. While the condition was not originally part of the 1988-89 discussions about the 100% reimbursement, by 1990, it is clear that this component of the tuition reimbursement program was also conditioned upon the availability of funds in the County budget. A description of the program was included in the same document as detailed the 50% program and was made subject to the same conditions. Additionally, the benefits of the 100% program were denied in several instances in 1990, 1991 and 1992 due to lack of funding.

Having determined that the at-issue practice was subject to a condition<sup>5/</sup>, we find that the County did not violate §209-a.1(d) of the Act when it eliminated the tuition reimbursement

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<sup>4/</sup>State of New York (Div. of Military and Naval Affairs), 24 PERB ¶3024, at 3047 (1991). See also Schuylerville Cent. Sch. Dist., 14 PERB ¶3035 (1981).

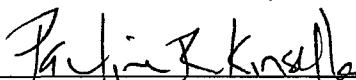
<sup>5/</sup>CSEA does not dispute that the funding availability condition, if properly before PERB, would cover the County's suspension of the tuition reimbursement program.

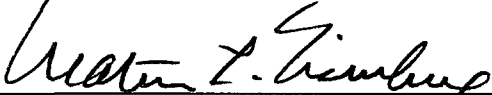
program in accordance with the condition upon which the program was premised.<sup>6/</sup>

We, therefore, affirm the decision of the ALJ and dismiss the exceptions filed by CSEA.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: August 10, 1994  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
\_\_\_\_\_  
Walter L. Eisenberg, Member

  
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Eric J. Schmertz, Member

<sup>6/</sup>Gananda Cent. Sch. Dist., 17 PERB ¶13095 (1984).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

TOWN OF BROOKHAVEN

CASE NO. E-1773

Upon the Application for Designation of  
Persons as Managerial or Confidential.

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COOPER, SAPIR & COHEN, P.C. (DAVID M. COHEN of counsel), for  
Employer

NANCY E. HOFFMAN, GENERAL COUNSEL (WILLIAM A. HERBERT of  
counsel), for Intervenor

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Brookhaven Town White Collar Unit, Suffolk Local, Civil Service Employees Association, Inc. (CSEA) to a decision of the Director of Public Employment Practices and Representation (Director) designating Donna M. Bonacci, Senior Citizen Program Director for the Town of Brookhaven (Town), as managerial under the criteria set forth in §201.7(a) of the Public Employees' Fair Employment Act (Act).

The Director determined that Bonacci had a significant role in the formulation of policy which warranted her designation as managerial. CSEA excepts to the Director's findings that Bonacci conceives and directs Town-wide programs providing a full range of services for the Town's senior citizens. The Town fully supports the Director's decision.

For the reasons set forth below, we affirm the decision of the Director and dismiss CSEA's exceptions.

In January 1992, Bonacci was the Town's Senior Citizen Program Supervisor. She requested the Suffolk County Department of Civil Service (Civil Service) to conduct a desk audit at that time to confirm that she was, in fact, performing the duties of Senior Citizen Program Director. She asserted to Civil Service that:

I am technically responsible for developing and directing all Senior Citizen programs within the Town, heading the entire Senior Citizen Division being responsible for all programs and activities.

I am responsible for our budget preparation, personnel, all grant proposals, and all contracts with outside agencies.

She also completed a Civil Service questionnaire in support of her request which states:

I make all decisions on a daily basis regarding all senior citizen programs operated by the Town and I make recommendations for new programming, personnel and any major changes in the operation of the Division to the Deputy Commissioner<sup>1/</sup>....

The operation and efficiency of the Division is basically in my hands. Generally, any new procedure that would enhance operation is recommended by me to the Dep. Commissioner and Town Board, and usually is welcomed and approved.

Bonacci further indicated to Civil Service that she was working on establishing a senior citizen network, that no one reviews her work or gives her assignments, that she regularly attends department meetings and participates in brainstorming for new programs, that she reviews daily the Town's senior citizen

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<sup>1/</sup>At that time, the Town did not have a Commissioner of Parks, Recreation and Human Resources, the department in which the Senior Citizen programs are located. Bonacci reported to Douglas Wells, the Deputy Commissioner.



programs, that she supervises over eighty-five employees, that she handles correspondence and public-speaking engagements, and that she meets with various parties to procure funding for the programs she administers and ensures compliance of those programs with any funding requirements.

Bonacci's position was reclassified by Civil Service as Senior Citizen Program Director in April 1992 based upon the duties she performed at that time and was expected to continue to perform as Director.<sup>2/</sup> Thomas P. Mohrman became the Town's Commissioner of Parks, Recreation and Human Services in July 1992.<sup>3/</sup>

While Bonacci testified at the hearing that since Mohrman's arrival, her duties have changed substantially and that she no longer has authority to innovate or set policy, or make any decisions without receiving prior approval from Mohrman or Wells, she admitted that she still oversees programs, develops and recommends new programs, interacts with Suffolk County regarding funding and negotiates leases. Mohrman confirmed in his testimony that Bonacci is still the contact person for County funding and she has written correspondence to that effect. She has negotiated leases and is involved in modifying and finalizing contracts for the provision of services to senior citizens. Although she claimed that Mohrman now made all the decisions at

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<sup>2/</sup>The Senior Citizen Program Supervisor title remains in the CSEA unit, although it was vacant at the time of the hearing. There are no "director" titles in the unit.

<sup>3/</sup>Neither Mohrman's nor Wells' titles are represented by CSEA.

meetings she was not even invited to attend, she could point to no examples of this alleged change. Indeed, her suggestions for the creation of new programs have been approved by Mohrman.<sup>4/</sup> Bonacci has also made the budget proposal for their department for 1994. Mohrman further testified that he expected Bonacci to continue to perform all the duties included in her Civil Service request in the same fashion she had been performing them before he became Commissioner.

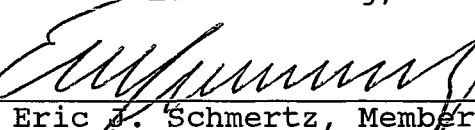
Based on Bonacci's and Mohrman's testimony and the documentary evidence introduced, which substantiated the testimony that Bonacci had an active role in program development, leases and contracts, funding and staff supervision, the Director determined that Bonacci has a significant role in the formulation of policy and duties which she is expected to perform which would support her designation as managerial.<sup>5/</sup> The record fully supports the Director's decision.

Based on the foregoing, we find that the Director's decision should be affirmed and CSEA's exceptions dismissed. SO ORDERED.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

<sup>4/</sup>In February 1993, she requested that the Department sponsor an Alzheimer's Disease Caregiver Course, which Mohrman supported.

<sup>5/</sup>City of Binghamton, 12 PERB ¶3099 (1979).

21- 8/10/94

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ALBERT E. SMITH,

Petitioner,

-and-

CASE NO. C-4133

TOWN OF OGDEN,

Employer,

-and-

LOCAL 1170, COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,

Intervenor.

ALBERT E. SMITH, Petitioner

DANIEL G. SCHUM, Esq., for Employer

LINDA McGRATH, for Intervenor

BOARD DECISION AND ORDER

On June 7, 1993, Albert E. Smith (petitioner) filed a timely petition for decertification of Local 1170, Communications Workers of America, AFL-CIO (intervenor), the current negotiating representative for employees in the following unit:

Included: All Laborers, Motor Equipment Operators, Mechanic (H-MEO), Mechanic Helper, and Foremen.

Excluded: Clerical and other employees covered in the OHE and ONESE bargaining units, the Foreman/Assistant to the Highway Superintendent, Highway Superintendent, and temporary employees working less than six months in a calendar year.

Pursuant to a Director's decision issued November 16, 1993, an on-site election was held on December 17, 1993.<sup>1/</sup> The tally of ballots showed that of sixteen eligible employees, all cast ballots, with seven votes cast for the intervenor and nine cast

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<sup>1/</sup> Town of Ogdén, 26 PERB ¶4055 (1993)

against it.

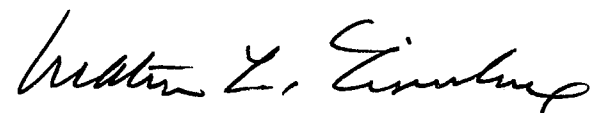
Pursuant to §201.9(h)(2) of the Rules of Procedure, the intervenor filed objections to conduct affecting the results of the election. After an evidentiary hearing, the Director issued a decision on April 6, 1994, finding that the election should be set aside and ordering a second election among the employees in the bargaining unit represented by the intervenor.<sup>2/</sup>


The second election was held on May 19, 1994.<sup>3/</sup> The results of this election show that the majority of eligible employees in the unit who cast valid ballots no longer desire to be represented for purposes of collective negotiations by the intervenor.<sup>4/</sup>

THEREFORE, IT IS ORDERED that the intervenor be, and it hereby is, decertified as the negotiating agent for the unit.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

<sup>2/</sup> Town of Ogden, 27 PERB ¶4026 (1994)

<sup>3/</sup> The intervenor filed objections to conduct affecting the results of this election but subsequently withdrew them.

<sup>4/</sup> Of the 15 ballots cast, 7 were for representation and 8 against representation. There were no challenged ballots.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

UNITED FEDERATION OF TEACHERS,  
LOCAL 2, AMERICAN FEDERATION OF  
TEACHERS, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4252

BOARD OF EDUCATION OF THE CITY  
SCHOOL DISTRICT OF THE CITY  
OF NEW YORK,

Employer.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

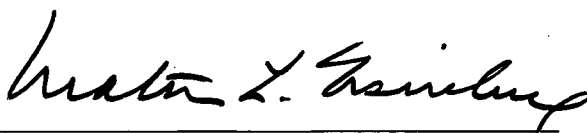
Unit: Included: Full-time and regular part-time sign language interpreters.

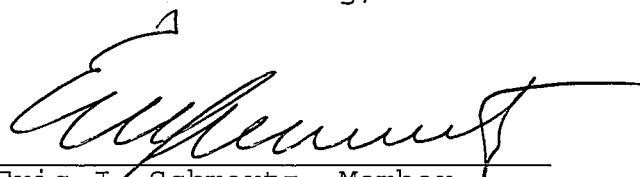
Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 1000, AFSCME, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4180

TOWN OF WALLKILL,

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Employer.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit I:

Included: All supervisors, i.e., Assessor, Building Inspector, Accountant, and Sr. Account Clerk (Office Manager-Purchasing Agent).

Excluded: All other employees, Clerk to Justice, Clerk to Highway Superintendent/Commissioner of Public Works, and Deputy Town Clerk.

UNIT II:

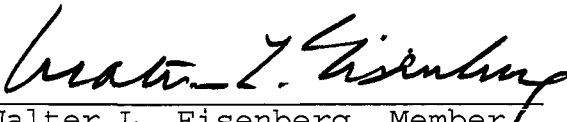
Included: All full-time and regular part-time employees.

Excluded: Supervisors, managerial and confidential employees, other represented employees, Clerk to Justice, Clerk to Highway Superintendent/Commissioner of Public Works, Deputy Town Clerk, elected officials, Clerk to Town supervisor, Deputy Tax Receiver, Planning Board Members, and Zoning Board Members.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

HONEOYE CENTRAL SCHOOL SUPPORT STAFF  
ASSOCIATION, NYSUT/AFT, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4194

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HONEOYE CENTRAL SCHOOL DISTRICT,

Employer.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

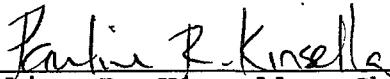
IT IS HEREBY CERTIFIED that the Honeoye Central School Support Staff Association, NYSUT/AFT, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

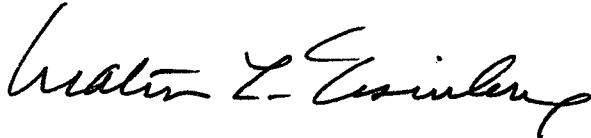
Unit: Included: All full-time and 12 month full-time employees in the areas of building and grounds, school food service, transportation and clerical.

Excluded: Secretary to the Superintendent of Schools, Business Office Supervisor/District Clerk, District Treasurer, District Payroll Clerk, all part-time employees, substitute employees, student employees, supervisors and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Honeoye Central School Support Staff Association, NYSUT/AFT, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

3D- 8/10/94

In the Matter of

INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, LOCAL 363,

Petitioner,

-and-

CASE NO. C-4220

TOWN OF LLOYD,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the International Brotherhood of Electrical Workers, Local 363 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: typist, bookkeeper's assistant, transfer station attendant, court clerk, deputy building inspector, housekeeper, building inspector I (P/T), motor equipment operator (MEO), motor equipment operator heavy (MEOH), working supervisor, auto mechanic, laborer, secretary (highway department-P/T), senior account clerk/typist, senior water treatment plant operator IIA, sewer treatment plant operator IIA, water/sewer superintendent, senior water/sewer MTC worker, water/sewer maintenance worker, senior sewer treatment plant operator IIA, clerk (water/sewer department-P/T).

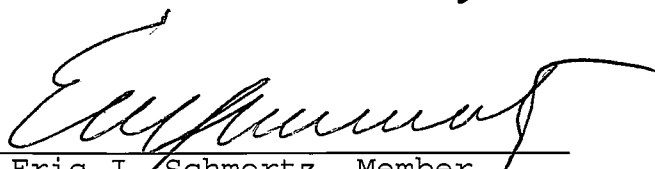
Excluded: All other employees, including elected officials.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the International Brotherhood of Electrical Workers, Local 363. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
\_\_\_\_\_  
Pauline R. Kinsella, Chairperson

  
\_\_\_\_\_  
Walter L. Eisenberg, Member

  
\_\_\_\_\_  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

3E- 8/10/94

In the Matter of

SYRACUSE CITY SCHOOL DISTRICT - UNIT II,  
SYRACUSE ASSOCIATION OF MANAGERS AND  
SUPERVISORS, SAANYS,

Petitioner,

-and-

CASE NO. C-4226

SYRACUSE CITY SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Syracuse City School District - Unit II, Syracuse Association of Managers and Supervisors, SAANYS has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Account Clerk-Typist (Payroll Supervisor),  
Administrative Aide, Architect II, Asst. School  
Transportation Director, Asst. School Lunch  
Director, Asst. Supt. Building and Grounds,  
Auditor II, Clerk of the Works, Cook II,  
Employee Assistance Program Coordinator, Fleet  
Manager, Health Services Supervisor, Manager of  
Systems and Programming, Manager,  
Operation/Programming, Materials/Resource


Management Specialist, Personnel Aide, Program Supervisor (Volunteer Program), School Recreation Supervisor, School Administrative Officer, School Purchasing Officer, School Lunch Director, School Transportation Director, School Lunch Manager, Supt. of Facilities Management, Supt. of Building and Grounds, and Systems Analyst.


Excluded: All other employees.

~~FURTHER, IT IS ORDERED~~ that the above named public employer shall negotiate collectively with the Syracuse City School District - Unit II, Syracuse Association of Managers and Supervisors, SAANYS. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION,  
INC., AFSCME, LOCAL 1000, AFL-CIO,

Petitioner,

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-and-

CASE NO. C-4240

FORT ANN CENTRAL SCHOOL DISTRICT,

Employer.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

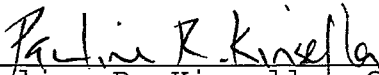
IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., AFSCME, Local 1000, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

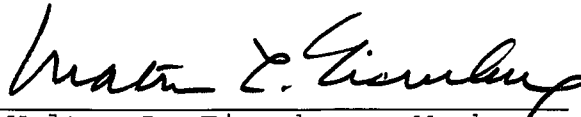
Unit: Included: All regular full-time and part-time non-instructional employees.

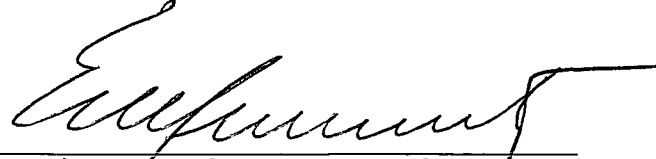
Excluded: Managerial/Confidential Employees,  
Elected/Appointed Officials, Per Diem  
Employees, Stenographer to the Superintendent  
of Schools, Business Manager, Account  
Clerk/Typist to the Business Manager, Head  
Custodian, Head School Bus Driver/Auto  
Mechanic, and all other employees.

~~FURTHER, IT IS ORDERED~~ that the above named public employer  
shall negotiate collectively with the Civil Service Employees  
Association, Inc., AFSCME, Local 1000, AFL-CIO. The duty to  
negotiate collectively includes the mutual obligation to meet at  
reasonable times and confer in good faith with respect to wages,  
hours, and other terms and conditions of employment, or the  
negotiation of an agreement, or any question arising thereunder,  
and the execution of a written agreement incorporating any  
agreement reached if requested by either party. Such obligation  
does not compel either party to agree to a proposal or require  
the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

WARSAW POLICE OFFICERS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4269

VILLAGE OF WARSAW,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 861,

Intervenor.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Warsaw Police Officers Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the

settlement of grievances.

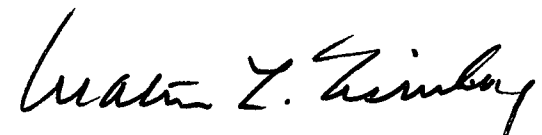
Unit: Included: All full-time police officers.

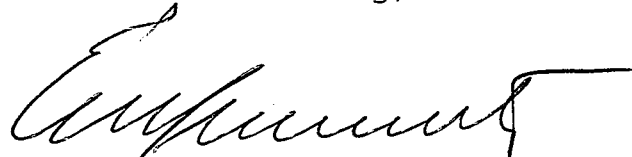
Excluded: Chief of police and assistant chief of police.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Warsaw Police Officers Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 10, 1994, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

3H- 8/10/94

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL 264,

Petitioner,

-and-

CASE NO. C-4272

TOWN OF ORANGEVILLE,

Employer.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the International Brotherhood of Teamsters, Local 264 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

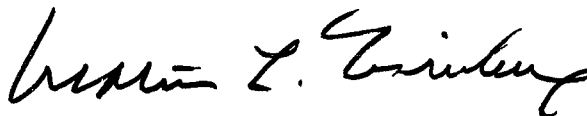
Unit: Included: All full-time and regular part-time Motor  
Equipment Operators.

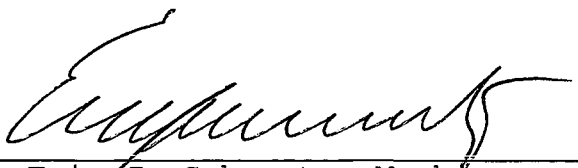
Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the International Brotherhood of Teamsters, Local 264. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and ~~confer in good faith with respect to wages, hours, and other~~ terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
\_\_\_\_\_  
Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

  
\_\_\_\_\_  
Eric J. Schmertz, Member

31- 8/10/94

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

SUBSTITUTES UNITED IN BROOME, NYSUT,  
AFT, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4155

SUSQUEHANNA VALLEY CENTRAL SCHOOL  
DISTRICT,

Employer.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Substitutes United in Broome, NYSUT, AFT, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

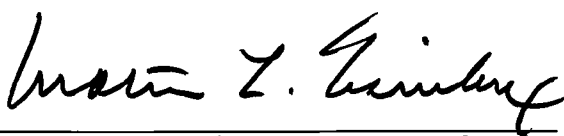
Unit: Included: All per diem substitute teachers who have received a reasonable assurance of continuing employment as referenced in §201.7(d) of the Act.

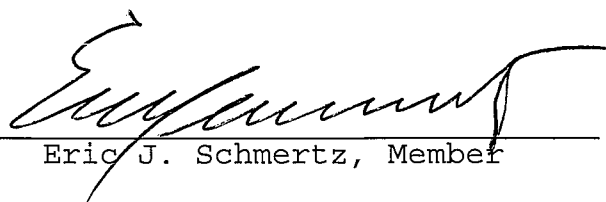
Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Substitutes United in Broome, NYSUT, AFT, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
Pauline R. Kinsella, Chairperson

  
Walter L. Eisenberg, Member

  
Eric J. Schmertz, Member

3J- 8/10/94

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

ROCKLAND COUNTY DISTRICT ATTORNEY'S  
CRIMINAL INVESTIGATORS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4263

COUNTY ROCKLAND,

Employer,

-and-

UNITED FEDERATION OF POLICE OFFICERS, INC.,

Intervenor.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Rockland County District Attorney's Criminal Investigators Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of

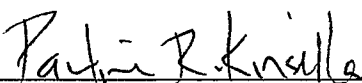
grievances.

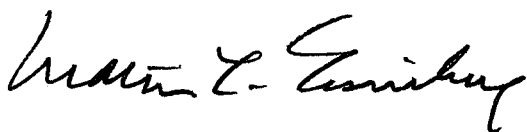
Unit: Included: Child Abuse Investigator, Criminal Investigator  
(group of classes), Senior Criminal  
Investigator (group of classes)

Excluded: All other employees of the Employer

~~FURTHER, IT IS ORDERED that the above named public employer~~  
shall negotiate collectively with the Rockland County District  
Attorney's Criminal Investigators Association. The duty to  
negotiate collectively includes the mutual obligation to meet at  
reasonable times and confer in good faith with respect to wages,  
hours, and other terms and conditions of employment, or the  
negotiation of an agreement, or any question arising thereunder,  
and the execution of a written agreement incorporating any  
agreement reached if requested by either party. Such obligation  
does not compel either party to agree to a proposal or require  
the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

  
\_\_\_\_\_  
Eric J. Schmertz, Member



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

SULLIVAN COUNTY EMPLOYEES ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4261

COUNTY OF SULLIVAN,

Employer,

-and-

LOCAL 445, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS,

Intervenor.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Sullivan County Employees Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the

settlement of grievances.

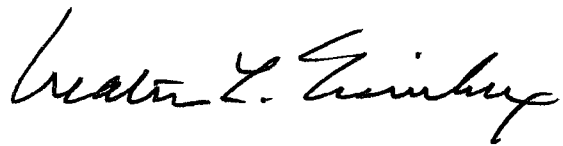
Unit: Included: Full-time and regular part-time employees in titles set forth on Schedule A.

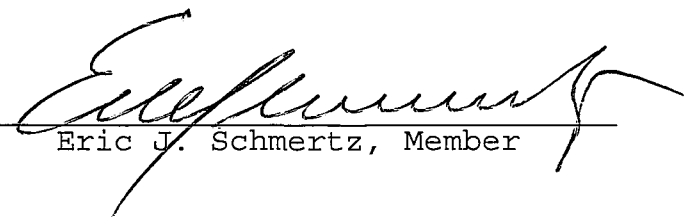
Excluded: Temporary, part-time and seasonal employees and all other employees.

~~FURTHER, IT IS ORDERED that the above named public employer~~  
shall negotiate collectively with the Sullivan County Employees Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 10, 1994  
Albany, New York

  
\_\_\_\_\_  
Pauline R. Kinsella, Chairperson

  
\_\_\_\_\_  
Walter L. Eisenberg, Member

  
\_\_\_\_\_  
Eric J. Schmertz, Member